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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,860	07/16/2003	Andrew R. Weisenberger	W-333	1759
802	7590	09/10/2004	EXAMINER	
DELLETT AND WALTERS P. O. BOX 2786 PORTLAND, OR 97208-2786			FRANK, RODNEY T	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/621,860	Applicant(s) WEISENBERGER ET AL.	
	Examiner Rodney T. Frank	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/16/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article entitled "Moisture Testing Guide for Wood Frame Construction Clad with Exterior Insulation and Finish System (EIFS)" published by the New Hanover County Inspection Department (hereinafter referred to as EIFS).

A brief summary of the substance of this article can be found at the following web address:

<http://www.toolbase.org/secondaryT.asp?TrackID=&CategoryID=1013>

The summary states:

This document provides guidance on where and how to inspect for moisture and moisture related damage; and provide a uniform protocol for reporting observations and moisture test results.

With this in mind, I will now refer to the claims.

In regard to claims 1, 11, and 19 this document describes a method and system for certifying at least a portion of an interior of a structure relative to moisture content, comprising the steps of: measuring moisture content levels within said portion of the interior of the structure; and providing a certificate of moisture content level measurements. Appendix "B" of the EIFS reference gives a detailed step-by-step testing procedure for moisture testing. Appendix "A" of the EIFS reference gives a detailed example of a typical water inspection report, which though not a certificate, would serve the same purpose and would actually give more detailed information than the claimed certificate.

Upon reading the specification in order to gain a better insight as to what the "certificate" being issued meant, it was determined by the examiner that the certificate is a document or report that is given upon the completion of a moisture test to determine whether a particular structure passed or failed the test based upon given parameters. In the EIFS reference, a moisture test is performed. Since the applicant does not claim any test in particular, the examiner feels that this meets the first part of the claim for measuring moisture. Then, since the certificate is a document that gives information regarding the results for the moisture test, the report described in the EIFS document though not exactly a certificate, would be deemed as an obvious equivalent to one of ordinary skill in the art. The examiner would also like to mention that though the certificate may be a simpler reporting means than a detail report as the one described in the EIFS reference, utilizing the certificate in lieu of the report does not provide any benefit nor produce any unexpected result over the prior art.

In reference to claims 2-4 and 12, the detailed report and testing procedure described in the EIFS reference would enable one of ordinary skill in the art to assess the area under test and make a determination whether or not the area or areas under test are compliant or non-compliant with established moisture testing regulations.

In reference to claims 5-9, 14-18, and 20-24, though the specific structure under test is not specifically disclosed, EIFS is disclosed to be a method for use with EIFS clad exterior walls of wood frame buildings, which all the various structures disclosed in the claims, would fall under this description.

In reference to claims 10, 13, 25, and 29-31, though the specific percentage value that is considered to be desired is not specifically disclosed, this parameter is a design choice that would be obvious to one of ordinary skill in the art. For example, an article from the Department of Wood and Paper Science; Housing and Clothing at the University of Minnesota entitled "Testing Housing Materials for Moisture" it states that if moisture content is measured to be less than 10%, then there is no need to worry, while a reading above 20% could indicate a serious moisture problem (this can also be found on line at the following internet address: <http://www.extension.umn.edu/info-u/household/BK270.html>). Therefore,

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these percentage parameters are viewed as a design choice well within the preview of one of ordinary skill in the art.

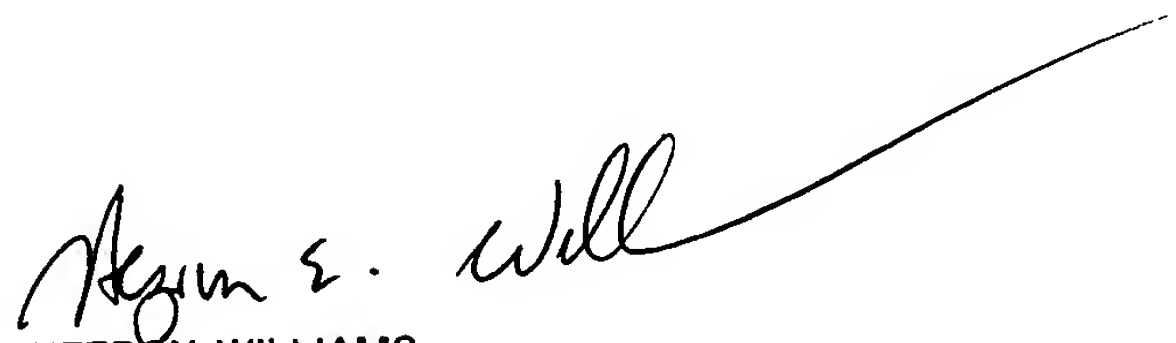
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney T. Frank whose telephone number is (571) 272-2193. The examiner can normally be reached on M-F 9am -5:30p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RTF
September 7, 2004


HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800